IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 656 OF 1989

Aruna Harishchandra Patil,)
residing at Sukhashanti)
Nursing Home, Bhyander,)
Dist.Thane at present in Jail.) ... Appellant.

Versus.

The State of Maharashtra.) ... Respondent.

Shri P.P.Hudlikar for the Appellant.

Shri D.P.Adsule, A.P.P. for the Respondent.

WITH

CRIMINAL APPEAL NO. 49 OF 1990

The State of Maharashtra. ... Appellant.

Versus.

Aruna Harishchandra Patil,)
aged 40, residing at)
Sukhashanti Nursing Home,)
Bhayander, Dist.Thane.) ... Respondent.

Shri D.P.Adsule, A.P.P. for the Appellant.

Shri P.P.Hudlikar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 27th & 28th November, 2006.

ORAL JUDGMENT.

1. This is a case where the trial court has held

that the Accused No.1 practiced as a gynaecologist though she did not possess any qualification and though she was not registered as a medical practitioner under the Maharashtra Medical Practitioners Act, 1961. Heard the learned Counsel appearing for the Appellant in Appeal No.656 of 1989 and the learned A.P.P. for the State. The Appellant in Appeal No.656 of 1989 is the original Accused No.1 Aruna Harishchandra Patil (hereinafter referred to as the Accsed No.1 or the Appellant). She has been convicted for the offences punishable under section 419 and 420 of the Indian Penal Code and for the offence under section 33 of the Maharashtra Medical Practitioners Act, 1961. She has been acquitted of offences alleged under sections 468, 465, 471 and 308 of the Indian Penal Code. For the offence under section 419 of the Penal Code, the Appellant has been sentenced to undergo R.I. for 3 years and to pay a fine of Rs.5000/-. In default of payment of fine, she has been directed to undergo further R.I. for six months. For the offence under section 420 of the Penal Code, the Appellant is sentenced to undergo R.I. for 7 years and to pay a fine of Rs.10,000/- and in default of payment of fine, she has been directed to undergo R.I. for one year. For offence under section 33 of the Maharashtra Medical Practitioners Act, 1961 she has been sentenced to pay fine of Rs.400/- and in default, to undergo simple

imprisonment for two months. The substantive sentences are directed to run separately. The sentences in default of payment of fine are also to run separately. Appeal No.65 of 1990 is preferred by the accused No.1 against order of conviction. The Appeal No.49 of 1990 is by the State against order of acquittal for offences punishable under sections 468, 465, 471 and 308 of the Indian Penal Code. I have heard the learned A.P.P. in support of the said Appeal and the learned Counsel for the Accused No.1, who is the Respondent in the Appeal against acquittal.

2. Briefly stated the case of the prosecution is that though Accused No.1 was running a nursing home known as Sukhashanti Nursing Home at Bhayander from 1984 and though she was claiming to be a qualified Medical Practitioner holding MBBS and MD degrees and a Diploma in Gynaecology and Obstetrics, she was in fact possessing no such qualifications. According to the case of the prosecution, the Accused No.1 was performing surgeries. The Accused No.2 was employed as a Mid-wife in the said Nursing Home of the Accused No.1 and the case of the prosecution is that Accused No.2 used to assist Accused No.1 in the Nursing Home. The learned trial Judge has acquitted the Accused No.2 of all offences which were alleged against her and there is no appeal against the acquittal preferred by the State

Government in so far as the acquittal of the Accused No.2 is concerned. P.W.1 Meenakshi Sadashiv Naik was at the relevant time a lady Police Constable attached to the Local Crime Branch, Thane. At that time P.W.1 was pregnant. At the instance of P.I. Zarekar (P.W.6) she visited the Nursing Home of the Accused No.1 on 8th October 1986. She was examined by the Accused No.1 and she prescribed medicines to her. P.W.1 paid Rs.50/- as professional fees to the Accused No.1. P.W.1 was asked to visit the Nursing Home on the next day by the Accused No.1. Accordingly P.W.1 visited the Nursing Home on the next day. The Accused No.1 after examining her advised her to get admitted in the Nursing Home as it was necessary to administer saline to her. The Accused No.1 also prescribed medicine to P.W.1. After her second visit, P.W.1 straight away proceeded to Bhayander Police Station and met P.I. Zarekar. Her statement was recorded by P.I. Zarekar which was treated as F.I.R.

Investigation was carried out by P.I. Zarekar (P.W.6).

3. It is the case of the prosecution that the Accused No.1 obtained a loan of Rs.3,60,000/- from the Syndicate Bank, Ghatkopar Branch, Mumbai. On 30th April 1985, the Accused No.1 submitted an application for grant of loan vide Exh.20. Along with the said application, she submitted a letter which is at Exh.21. Along with the said letter, the Accused No.1 submitted a

xerox copy of the registration certificate issued by the Maharashtra Medical Council in the name of Kum.Sarita Sayaji Rane on 4th November 1972 bearing registration No.28964. She also forwarded a xerox copy of the certificate of registration (Exhibit 23) dated 30th January 1975 purportedly issued by the Maharashtra Medical Council, Bombay, in the name of Idgunji Anjani Ganesh. She also forwarded a xerox copy of degree certificate of the decree (Exhibit 24) of Doctor of Medicine issued by the Chancellor of the University of Bombay in the name of Anjani Ganesh Idgunji.

4. According to the prosecution case, the Registrar of Maharashtra Medical Council informed the Investigating Officer that the Accused No.1 was not enrolled as a Medical Practitioner with the said Council. The Registrar informed that Dr.Anjani Ganesh Idgunji was enrolled with the Medical Council as a Medical Practitioner and the said Dr.Anjani is not Accused No.1. It was also stated that after her marriage, the said Dr.Anjani is known as Sau Anjali Vivek Nirogi. As per the record of the Maharashtra Medical Council, the registration number 28964 was assigned to the registration in the name of Dr.(Miss) Telang Nalini Govindrao who passed MBBS Examination from Karnataka University. The said Miss Telang married in the year 1981 and after her marriage, her name is

changed to Sau Uma Yeshwant Rane. According to the case of the prosecution, the certificate of registration (Exh.36 and Exh.22) in the name of Sarita Sayaji Rane produced by the Accused No.1 was not issued by the Maharashtra Medical Council.

5. The prosecution examined various prosecution witnesses. In all the prosecution examined 9 witnesses including the Investigating Officer. The prosecution also led documentary evidence.

6. P.W.1 Mrs.Meenakshi Naik was a Police Constable working in the local Crime Branch, Thane in the year 1986. She stated that on 8th October 1986 P.I. Zarekar (P.W.6) of Bhayandar Police Station called her and she was ordered to visit the Nursing Home of Accused No.1. According to the said witness, she was pregnant at the relevant time. She visited the said Nursing Home for her check up. She stated that the Accused No.1 was present in the Nursing Home and there were two women patients admitted in the Nursing Home at that time. The Accused No.2 was also present in the Nursing Home at that time. P.W.1 met Accused No.1 in her cabin. The Accused No.1 examined her in presence of Accused No.2. Accused No.1 opined that P.W.1 was suffering from weakness and therefore, she prescribed tablets. When asked by the P.W.1, the Accused No.1 quoted her fees and

P.W.1 paid to her a sum of Rs.50/- by way of professional fees. P.W.1 instructed her to visit the Nursing Home next day. Accordingly P.W.1 visited the Nursing Home at 10.00 a.m. on the next day. She stated that she also noticed that there were two women patients admitted in the Nursing Home of the Accused No.1. P.W.1 stated that she was examined by the Accused No.1. She was advised by the Accused No.1 to get herself admitted in the Nursing Home as according to Accused No.1 it was necessary to administer saline. On that day Accused No.1 prescribed some medicines to P.W.1. From the Nursing Home P.W.1 straight away came to the Bhayander Police Station and disclosed the happenings to P.I. Zarekar. Along with P.I. Zarekar, P.W.1 again visited the Nursing Home in the afternoon at about 12.30 p.m. The medicines in the Nursing Home were seized. F.I.R. of P.W.1 (Exh.12) was thereafter recorded by the Bhayandar Police Station. P.W.1 produced the prescription (Exh.13) issued to her by the Accused No.1.

7. In the cross-examination, P.W.1 stated that in the morning at about 8.00 a.m. on 8th October 1986, she was told to visit Bhayander Police Station. She visited Bhayandar Police Station by 9.00 a.m. and she reached the Nursing Home of the Accused No.1 at about 11.00 a.m. She stated that the amount of Rs.50/- paid to the Accused No.1 was her amount and it was not the amount

provided by P.I. Zarekar. She admitted that she did not purchase any medicines prescribed by Accused No.1. She stated that on 9th October 1986, no prescription was given by the Accused No.1. She stated that she did not tell Accused No.1 on 9th October 1986 that she had not taken the medicine prescribed by the Accused No.1 on the earlier day. She stated that even the Accused No.1 did not ask her whether she had taken the medicine prescribed by her.

8. P.W.2 is one Phulubai Vijay Maya. She identified the Accused No.1 before the Court. She stated that she had taken medicines from her and she delivered a female child in the Nursing Home of the Accused No.1. She stated that her said daughter was well. The said witness was not cross-examined by the Advocate for the Accused No.1.

9. P.W.3 Shri Shashikant Achutrao Gadre was the Registrar of Maharashtra Medical Council from 2nd April 1980 to 15th December 1986. He stated that on 15th May 1986, he received a letter from the P.S.I. of Bhayandar Police Station to make enquiry about the Accused No.1. He produced the original letter at Exh.17. He stated that every Medical Practitioner has to enroll himself with the Medical Council. The Medical Council has maintained a register of medical practitioners. He

stated that after verifying from the register, he found that the Accused No.1 was not enrolled as a Medical Practitioner with the Medical Concil. Accordingly, he informed the Bhayandar Police Station. The reply issued by him (Exh.18) to the Police Station was proved in his evidence. He stated in examination-in-chief that Dr.Anjani Ganesh Idgunji was enrolled with the Medical Council. He stated that he also informed the address of Dr.Anjani to the Police Station. He stated that office of the Medical Council had not received any application from the Accused No.1 to enroll herself as a Medical Practitioner. In the cross-examination, he was shown a certificate of registration issued in the name of Sarita Sayaji Rane bearing No.28964. He stated after seeing the said certificate that Sarita Sayaji Rane was registered with the Maharashtra Medical Council and her registration number is 28964. A xerox copy of the said registration certificate was shown to him. He stated that the xerox copy was a copy of the said original.

The xerox copy was exhibited as Exh.22.

10. P.W.4 Pillar Santor Sukumar was working as the Branch Manager in Syndicate Bank, Ghatkopar Branch, Mumbai during the year 1984-85. He stated that he knew the Accused No.1. According to him on 30th April 1985, the Accused No.1 had visited his branch and had asked for a loan in the sum of Rs.3,60,000/-. He produced in

evidence the original loan application (Exhibit 20) submitted by the Accused No.1. He stated that the loan application bears the signature of Accused No.1. He stated that necessary particulars were produced by the Accused No.1 along with her a letter (Exh.21). He stated that along with Exh.21, the Accused No.1 produced certificates in the name of Anjani Ganesh Idgunji. He stated that when a query was made to the Accused No.1 she clarified that Anjani Ganesh Idgunji was her maiden name. A limited cross examination of the said witness was made by the Accused No.1. P.W.4 stated that he does not remember whether his statement was recorded by the Police. He stated that he did not doubt though the Accused No.1 gave two maiden names and two different marital names.

11. P.W.5 Dr.Anjali Vivek Nirogi stated that she passed her MBBS Degree in the year 1975 and she did her MD in March 1978. Her maiden name was Anjani Ganesh Idgunji. She stated that she used to attend a Polyclinic at Prabhadevi and after about four years she joined a Polyclinic at Mahim. She never practiced at Bhayandar. She never obtained any loan from Syndicate Bank. She identified the Accused No.1 who was present before the Court by stating that the Accused No.1 was practicing in Nadkarni Polyclinic as a Gynaecologist and she used to attend the said Polyclinic. The Advocate

for the Accused No.1 declined to cross-examine the said witness.

12. P.W.6 Shankar Gangaram Zarekar stated that he had asked P.W.1 Meenakshi Naik to visit the Nursing Home of the Accused No.1 with the object of verifying whether the Accused No.1 was practicing as a Medical Practitioner. He stated that after visiting her Nursing Home, P.W.1 informed him that Accused No.1 had examined her. He stated that P.W.1 visited the Nursing Home of the Accused No.1 on the next day and after returning from the Nursing Home, she came to the Police Station and lodged the complaint. He stated that he referred the matter to the Maharashtra Medical Council. In the cross-examination, the witness stated that on 8th October 1986, the Complainant had been in to Police Station but she did not meet him. He did not enquire whether Aruna Harishchandra Patil was the maiden name or the marital name of Accused No.1 and whether she was known by that name. He stated that he inquired with the Maharashtra Medical Council. He also inquired with the School which the Accused No.1 attended at Ghatkopar. However, he did not get any information. He stated that he did not record the statements of the concerned persons in that behalf. He admitted that he did enquire with the Accused No.1 about her registration certificate. He also inquired with the Accused No.1

whether she had married and she told him that she was married. He stated that he does not know whether one Amar Sayaji Rane aged about 9 years was the son of Accused No.1. P.W.6 was recalled for further examination-in-chief. He stated that the Accused Nos.1 and 2 were arrested on 9th October 1986. He also recorded the statement of Satish Ganesh Idgunji. He stated that on 15th May, 1989, he wrote a letter to the Registrar, Maharashtra Medical Council. He stated that he recorded the statement of Dr.Krishna Chimote as well as Dr.Uma Yeshwant Rane. In the cross-examination he admitted that the statement of Dr.Uma Yeshwant Rane was recorded at 11.30 p.m.

13. P.W.7 Achyut Kashinath Karekar was holding the post of the Registrar, Maharashtra Medical Council with effect from 16th August 1988. He stated that all medical practitioners practising in allopathy are required to register with the Maharashtra Medical Council. He stated that after registration, the Maharashtra Medical Council issues a registration certificate to the concerned Medical Practitioner and on such certificate issued by the Maharashtra Medical Council, the seal of the Maharashtra Medical Council is embossed. He stated that one Shri M.V.Bagul was the Registrar of the Maharashtra Medical Council prior to him. He was shown the registration certificate marked

Exh.36 which was earlier shown to P.W.3 Shri Shashikant Gadre in his cross-examination. After looking at the certificate Exh.36, he stated that the certificate was not issued by the Council and as per the office record, the certificate bearing the said registration number has been issued to one Dr.(Miss) Telang Nalini Govindrao. He stated that the seal on the certificate at Exhibit 36 was not that of the Maharashtra Medical Council. He stated that Exh.36 was not the registration certificate issued by the Council. In the cross examination, he has admitted that Shri Bagul was the Registrar of Maharashtra Medical Council in the year 1972. He produced the original application of Dr. Miss Telang Nalini Govindrao submitted to the Council for registration. He stated that he was not aware as regards any rule requiring mentioning of the surname first and then the name of the Applicant in the registration certificate. He stated that he was unable to tell whether the signature on the Certificate at Exh.36 was that of Shri M.V.Bagul. He was unable to point out the rule which requires the seal of the Medical Council to be embossed on the registration certificate. He expressed inability to state whether he had an occasion to see the signature of Shri M.V.Bagul. He denied the correctness of the suggestion that he falsely stated that Exh.36 is not the original certificate.

14. P.W.8 Dr.Krishna Sudhir Chimote stated that she had obtained MBBS and a diploma in Anaesthesiology. She produced her certificate of registration issued by the Maharashtra Medical Council. She stated that from May 1985 she was residing at Bhayandar. She stated that she knew the Accused No.1 as Dr.Aruna Patil, M.D., D.G.O. She stated that at the Sukhshanti Nursing Home at Bhayander, there is a board displayed in the name of the Accused No.1. She stated that on number of occasions she had visited the hospital of Accused No.1 for giving anaesthesia. She stated that the Accused No.1 herself performed surgery. She stated that she was present when Accused No.1 performed operations. She opined that if a layman performs operation, it is very fatal.

15. P.W.9 Dr.Uma Yeshwant Rane stated that her maiden name was Nalini Govindrao Telang and she passed MBBS in the year 1972 from the Karnataka University. She stated that she has registered herself with the Maharashtra Medical Council and her registration number was 28964. She produced her original registration certificate at Exh.42. She stated that she does not know the Accused No.1 or one Sarita Sayaji Rane. In the cross- examination she admitted that she was not in a position to identify the signature of the Registrar on the certificate.

16. Shri Hudlikar, the learned Counsel appearing for the Accused No.1 has made extensive submissions. He submitted that no offence has been proved against the Accused No.1. He submitted that it is not established by the prosecution that the Accused No.1 was not a registered medical practitioner. He submitted that the certificate at Exh.36 is a genuine certificate. He submitted that the said certificate has been duly signed by Shri M.V.Bagul who was admittedly the Registrar of Maharashtra Medical Council at the relevant time. He submitted that the certificate itself discloses that the Accused No.1 was a registered medical practitioner. Inviting my attention to the evidence of P.W.1, he pointed out that according to the version of P.W.1 after visiting the Nursing Home of Accused No.1 on 9th October 1986, she visited the Bhayandar Police Station. Around 12.30 in the afternoon, P.I. Zarekar along with the said witness visited the Nursing Home of Accused No.1. At that time medicines in the Nursing Home were seized. He pointed out that the witness has stated that after the seizure, her F.I.R. was recorded. He submitted that thus the investigation commenced even before recording of the F.I.R. and therefore, the investigation and the consequential actions are vitiated. He submitted that the seizure of various goods under panchanama at Exh.10 becomes illegal. He

submitted that the prosecution has not examined any patient so as to prove that the Accused No.1 had deceived any one and that any loss or injury was caused to any one due to any act on the part of the Accused No.1. He submitted that there is enough evidence on record to show that the Accused No.1 was a registered medical practitioner and was practicing as such. He submitted that no case is made out either under section 419 or under section 420 of the Indian Penal Code. He submitted that as the Accused No.1 was possessing registration, no offence under the Maharashtra Medical Practitioners Act, 1961 has been made out. He has invited my attention to the several discrepancies and inconsistencies in the prosecution case. He submitted that the trial court ought to have passed an order of acquittal of the Accused No.1.

17. Without prejudice to the aforesaid submissions, he invited my attention to the fact that the Accused No.1 was acquitted of the offences punishable under sections 468, 465, 471 and 308 of the Indian Penal Code. He submitted that considering the fact that the said offences are not proved by the prosecution, the finding of guilt for offences under sections 419 and 420 of the Indian Penal Code was inconsistent with the finding of innocence. He submitted that the finding of the learned Judge is that the prosecution has failed to establish

that the Accused No.1 forged the MBBS degree certificate of Dr.Anajani Ganesh Idgunji and has dishonestly used the same.

18. Lastly Shri Hudlikar submitted that the Accused No.1 has not done any harm to any patient. He submitted that the Accused No.1 has repaid the entire amount of loan advanced to her by the Syndicate Bank with interest. He submitted that it is an admitted position that while practicing as a medical practitioner, the Accused No.1 has not caused harm to any patient. Without prejudice to all his earlier submissions, he submitted that considering the present age of the Accused No.1, a lenient view is required to be taken. He submitted that after the registration of the F.I.R., the Accused No.1 has stopped all her activities.

19. The learned A.P.P supported the impugned Judgment and order by pointing out the evidence on record. In support of the Appeal against acquittal, he submitted that offences under section 468, 465, 471 and 308 of the Indian Penal Code were duly established by the prosecution. The learned Counsel for the Accused No.1 submitted that in an appeal against acquittal, no interference is called for as the order of acquittal passed the learned trial Judge is consistent with the evidence on record.

20. I have carefully considered the submissions made by the learned Counsel appearing for the parties. I have also perused the notes of evidence, exhibited documents and the statement of Accused No.1 recorded under section 313 of the Code of Criminal Procedure, 1973. I have also perused the impugned judgment and order.

21. Turning to the evidence of P.W.1 it must be noted here that she has not stated in her examination-in-chief that P.I. Zarekar while deputing her to visit the Nursing Home of the Accused No.1 had disclosed to her that Accused No.1 was not a registered medical practitioner. The fact that the Accused No.1 examined the P.W.1 who was pregnant at that time is not challenged in the cross-examination. There is also no challenge to the fact that P.W.1 paid an amount of Rs.50/- to Accused No.1. The evidence of P.W.2 establishes that she got herself admitted in the Nursing Home of the Accused No.1 and the Accuse No.1 gave her medicines. She has stated that she delivered a female child in the Nursing Home of Accused No.1. No cross-examination of the said witness has been made by the Advocate for Accused No.1.

22. The Police Inspector of Bhayandar Police Station

had written a letter dated 15th May 1986 (Exh.17) to the Maharashtra Medical Council, Mumbai. The first query made in the said letter records that Sau Aruna Harishchandra Patil was posing to be MBBS, MD, DGO and she was stating that she had lost her certificates. The query was whether any record was available with the Maharashtra Medical Council about the alleged decrees obtained by her and whether there was any registration. The second query was on the basis of a xerox copy of the registration certificate No.33144 dated 30th January 1975 in the name of Dr.Idgunji Anjani Ganesh. The query was regarding the full address of Dr.Anjani Idagunji and details about the place where she has taken education. A request was made to supply a photograph of Dr.Anjani Idgunji.

23. In reply (Exh.18) dated 29th June 1989 to the letter at Exhibit 15, the P.W.3 Shri Shashikant Achutrao Gadre, the Registrar of Maharashtra Medical Council replied that Dr.Anjani is a registered medical practitioner bearing registration No.33144 dated 30th January 1975. It is stated that the said Dr.Anjani Ganesh Idgunji passed M.B.B.S. degree in 1975 from Topiwala National Medical College and her name was changed to Sau.Anjani Vivek Nirogi on 13th June 1978. Her address was also disclosed in the said letter and it was stated that her photograph was not available. The

reply categorically records that Dr Aruna Harishchandra Patil was not a registered medical practitioner as per the record of the Medical Council. These two letters have been proved in evidence by P.W.3. In the cross-examination, the original certificate of registration (Exhibit 36) in the name of Sarita Sayaji Rane was shown to the said witness. On seeing the original certificate of registration, he stated that the said Sarita Sayaji Rane has been registered with the Maharashtra Medical Council, Bombay under registration number 28964 dated 4th November 1972. He stated that a xerox copy of the registration certificate which is at Exh.22 was the xerox copy of the said original certificate of registration.

24. P.W.4 Pillar Santor Sukumar produced in evidence the application for loan (Exhibit 20) submitted by the Accused No.1 and a letter at Exhibit 21 submitted by the Appellant along with its accompaniments. The Application for loan at Exh.20 reveals that the Appellant disclosed her name as Aruna H.Patil a/s Mrs.Vaishali J.Walake. Against the column "Father's/Husband's name" the Appellant has written the name of Mr.Jagdish Govind Walake. She has disclosed her educational qualification as M.D., D.G.O. In the letter at Exh.21 addressed to the Manager of Syndicate Bank, the Appellant has stated that her pre-marital name was

Anjani Ganesh Idgunji. In the Application form at Exh.20, the Applicant disclosed her name after the marriage as Mrs.Vaishali J.Walake. She described the name of her husband as Shri Jagdish Govind Walake. Exh.22 is a zerox copy of the alleged certificate issued by the Maharashtra Medical Council bearing registration No.28964. The said certificate is issued in the name of Kum.Sarita Sayaji Rane on 4th November 1972. The qualification of Sarita is mentioned as M.B.B.S. (Karnataka) 1972. The registration certificate issued by Maharashtra Municipal Council in the name of Kum.Idgunji Anjani Ganesh is dated 30th January 1975 and the registration number is 33144. The said certificate notes that the said Kum.Idgunji Anjani Ganesh possesses the qualification of M.B.B.S.(Bombay) of 1975. Exh.36 is the alleged original certificate issued in the name of Kum.Sarita Sayaji Rane bearing registration number 28964. The said certificate was shown by the Appellant to P.W.3 Shashikant Gadre in his cross- examination. It is sought to be contended that the P.W.3 admitted the said certificate at Exh.36 as a genuine certificate. Paragraph 3 of the cross- examination of P.W.3 reads thus:

> "3. On seeing the original certificate of registration now shown to me I say that Sarita Sayaji Rane has been registered with

Maharashtra Medical Council Bombay and registration number is 28964. The date of registration is 4.11.72. The zerox copy of the registration certificate now shown to me is the same. It is at Exh.22."

Thus it is very clear that what is stated in paragraph 3 by the witness is on the basis of the perusal of the certificate at Exh.36. He has not made the statement which is recorded in paragraph 3 after due verification of the record of the Maharashtra Medical Council. The P.W.7 Achyut Kashinath Karekar who was holding the post of Registrar of Maharashtra Medical Council from 16th August 1988 deposed that the certificate at Exh.36 has not been issued by Maharashtra Medical Council. He stated that the registration number 28964 dated 4th November 1972 was of Dr.(Miss) Telang Nalini Govindrao. He stated that the seal on the certificate at Exh.36 was not of the Maharashtra Medical Council. He produced in evidence an application for registration submitted by the said Dr.(Miss) Telang Nalini Govindrao which is at Exh.37. The said application discloses that the said candidate passed M.B.B.S. examination from Karnataka University in the year 1972. On the said application, the registration number 28964 and 4th November 1972 as the date of registration have been clearly endorsed. P.W.9 Dr.Uma Yeshwant Rane stated that her maiden name

was Nalini Govindrao Telang and she passed M.B.B.S. examination from Karnataka University and said that she has been granted registration by the Maharashtra Medical Council in her name under the registration No.28964. She produced her original registration certificate at Exh.42.

25. It was sought to be contended that the Registrar of the Medical Council could not say with certainty whether the certificate at Exh.36 is issued under the signature of Shri M.V.Bagul, Registrar. It was submitted that the said Bagul was not examined as a prosecution witness and therefore, the certificate at Exh.36 has to be treated as a genuine certificate. The said argument cannot be accepted for more than one reason. Firstly the Appellant in the letter at Exh.21 addressed to the Manager of the Syndicate Bank claimed that her premarital name was Anjani Ganesh Idgunji. Secondly P.W.7 Achyut Karekar deposed that the seal on the said certificate at Exh.36 was not that of the Maharashtra Medical Council. Thirdly P.W.9 Dr.Uma Yeshwant Rane deposed before the Court that her maiden name was Nalini Govindrao Telang and she has been granted registration on 4th November 1972 vide registration No.28964 and she produced the registration certificate bearing registration No.28964 issued by the Maharashtra Medical Council dated 4th November 1972 at

Exh.42. Lastly, the original application for enrollment filed by the said Nalini Govindrao Telang was produced on record at Exh.37 on which there is an endorsement that the said candidate was granted registration No.28964 dated 4th November 1972. The document at Exh.22 is a xerox copy of Exh.36. It is therefore obvious that the documents at Exh.36 and Exh.22 are not at all genuine and authentic documents. It is proved by the prosecution that the registration number 28964 is the registration number of the registration granted to Dr.Ms.Nalini Govindrao Telang (P.W.9). Thus the prosecution has established that one Savita Sayaji Rane was not granted registration certificate by the Maharashtra Medical Council. In any case the Maharashtra Medical Council did not grant registration certificate No.28964 on 4th November 1972 in favour said Kum.Savita Sayaji Rane.

26. At this stage it will be necessary to refer to the statement made by the Appellant under section 313 of the Code. While answering question No.22, she has stated thus:

> "I had education upto 7th std. at Ghatkopar in Dhanji Deoji Municipal School. Then I had further education in Chhabildas Girls School at Dadar. I then joined Somaya College for

inter science. I took admission in Grant Medical College Bombay. In 1967 I got married. I did first and second year of M.B.B.S. in Grant Medical College. I came to Belgaon with my husband. I joined National Medical College, Belgaon. I did my M.B.B.S. from that college. In October 1972 I came to Bombay. I got myself registered with Mah.Medical Council in Nov. 1972 by giving application and certificate. I joined Civil Hospital Thane as M.O. I was attached to Civil Hospital till 1976. During this period I did my M.D. from St.G.S.Medical College, Bombay. I was practising at Turbhe and Keena upto 1980. In 1981 I started listing Nadkarni Polyclinic. I was performing operation. Aruna Harischandra Patil was my pre-marital name. After marriage my name is Sarita Sayaji Rane. From 1984 I am running nursing home at Bhayandar."

Thus her defence seems to be that her name after marriage was Sarita Sayaji Rane and her name prior to the marriage was Aruna Harischandra Patil. P.W.3 Shashikant Gadre has deposed that Dr Aruna Harischandra Patil has not been enrolled as a Medical Practitioner with the Maharashtra Medical Council. That is also

stated in the letter at Exh.18 issued by the Registrar, Maharashtra Medical Council on 15th May 1986. In her letter at Exh.21 sbmitted to the Syndicate Bank, the Appellant claimed that her premarital name was Anjani Ganesh Idgunji. The evidence of P.W.5 Dr.Anjani Vivek Nirogi is relevant. The said witness stated that her maiden name was Anjani Ganesh Idgunji. She has stated that she is possessing M.B.B.S. and M.D. degrees and she never practiced at Bhayandar and she never obtained a loan from the Syndicate Bank. She stated that she knew the Appellant and the Appellant was practicing in Nadkarni Polyclinic as a Gynaecologist and she used to attend the said Polyclinic. The said witness is not at all cross-examined by the Appellant-accused No.1. Thus it is obvious that the Appellant's maiden name was not Anjani Ganesh Idgunji. It is pertinent to note that in the statement under section 313 the Appellant stated that her premarital name was Aruna Harishchandra Patil and after her marriage her name was Sarita Sayaji Rane. In the loan application at Exh.20, the Appellant has given her name as Aruna H.Patil alias Mrs.Vaishali J.Walake. In reply to Column (iv) of paragraph A of the loan Application (Exhibit 20) she stated that she was married and obviously therefore the name of the person mentioned in Column (ii) i.e. Jagdish Govind Walake is the name of her husband. In letter at Exh.21 she disclosed her premarital name as Anjani Ganesh Idgunji.

If this is the state of affairs, it is obvious that the defence of the Appellant that her name after marriage was Sarita Sayaji Rane was rightly rejected by the trial Court. Thus the conclusion of the aforesaid discussion is that the Appellant had not obtained registration from the Maharashtra Medical Council as required by the Medical Practitioners Act, 1961. The Appellant had forwarded to the Syndicate Bank the certificate at Exh.23 in the name of Kum.Idgunji Anita Ganesh which discloses that the said woman passed M.B.B.S. Examination from the Bombay University in 1975. The certificate at Exh.36 shows that Sarita Sayaji Rane passed M.B.B.S. from Karnataka University in the year 1972. Going by her statement under section 313, the contents of the Application for loan and the letter of the Appellant at Exh.21, the Accused No.1 disclosed two different names as her maiden names. Therefore, there is absolutely no evidence on record to show that the Appellant was Sarita Sayoji Rane and that she possessed the qualifications of M.B.B.S.,M.D. and D.G.O.

27. The trial Court has convicted the Appellant for the offence punishable under section 419 of the Indian Penal Code. The evidence of P.W.1 discloses that the Appellant examined her by posing herself as a Gynaecologist. P.W.2 has stated that she was admitted in the Nursing Home of the Appellant for the purpose of

delivery and she delivered a child in the nursing home of the Accused No.1. She has stated that she took medicines from the Appellant. Evidence of P.W.5 Dr.Anjani Vivek Nirogi discloses that the Appellant was practicing in Nadkarni Polyclinic as a Gynaecologist and she used to attend the said Polyclinic. Surprisingly there is no cross- examination made of the said witness. P.W.8 Krishna Sudhir Chimote stated that she was M.B.B.S. and she had obtained a diploma in Anaesthesiology. She stated that she visited Sukhshanti Nursing Home at Bhayandar for administering Anesthesia to the patients. She stated that there was a board displayed at the said Nursing Home of the name of the Appellant. She stated that the Appellant herself performed operations and she was present when the Appellant performed operations. In the cross-examination, she stated that about five to six times she must have visited the Hospital to administer Anaesthesia. Thus there is a clinching evidence on record to show that the Appellant was falsely representing to the patients that she was a medical practitioner. She was examining the patients and prescribing medicines. In fact she even used to perform surgery which is normally done only by a qualified Doctor. Even in the application for loan submitted to the Syndicate Bank, the Appellant claimed to be a qualified doctor possessing qualitifcations of M.D. and

D.G.O. Thus offence under section 419 is established by the prosecution beyond a reasonable doubt.

28. So far as the offence under section 420 is concerned, the application for loan at Exh.20 and the letter at Exh.21 clearly show that the Appellant represented that she was a medical practitioner possessing educational qualification of M.D. and D.G.O. She claimed to have registered herself as a medical practitioner with the Maharashtra Medical Council. The application form at Exh.20 which is filled up by the Appellant is meant for seeking financial assistance by a professional. Thus as a professional medical practitioner she claimed loan. The officer of the Syndicate Bank stated that the loan was sanctioned as asked for by the Appellant. The Appellant had asked for loan in the sum of Rs.3,60,000/-. It must be noted here that the said witness has not deposed anything about the repayment of the loan by the Appellant. Thus it is clear that a representation was made by the Appellant to the Syndicate Bank that she was a qualified medical practitioner. The said representation was false and dishonest which induced the Bank to sanction and disburse a loan of Rs.3,60,000/- which could have been granted only to a professional who was a qualified and registered medical practitioner. In view of this position, there is no error in the finding recorded by

the trial Court that the prosecution has established the offence under section 420 of the Penal Code. I have already held earlier that the Appellant was not possessing any valid registration. Therefore, offence under section 33 of the Medical Practitioners Act, 1961 is also established.

29. The trial Court acquitted the Appellant of the offences under sections 468, 465, 471 and 308 of the Indian Penal Code. I have already discussed the evidence led by the prosecution in detail. There is not even a case made out by the prosecution that there was any attempt to commit culpable homicide on the part of the Appellant. Therefore, the learned trial Judge was right in holding that the offence under section 308 was not established. So far as offence under section 465 is concerned, the learned trial Judge has made elaborate discussion. The learned trial Judge found that the Appellant never used the alleged original registration certificate at Exh.36 and she had submitted to the Syndicate bank the xerox copies of the certificates which are at Exh.22, 23, and 24. So far as the documents at Exh.23 and 24 are concerned, the same pertain to Dr.Anjani Ganesh Idgunji and there is no doubt about the genuineness of the said documents. However, the Appellant is not Dr.Anjani Ganesh Idgunji. The learned trial Judge, therefore, held that the

allegations of forgery as regards the documents at Exhs.23 and 24 are not established. Therefore, the learned trial Judge held that the forged documents were not used for the purpose of cheating. That is the reason why the learned trial Judge has recorded a finding of acquittal in so far as the offences under section 465, 468, and 471 are concerned. The view taken by the learned trial Judge as regards the offences alleged under sections 468, 465, 471 and 308 of the Indian Penal Code is certainly a possible view which could have been taken on the basis of the evidence on record. Even assuming that it is possible to draw a different conclusion, it is no ground to interfere in an Appeal against acquittal.

30. The learned counsel for the Accused No.1 has made a submission that the sentences imposed are on the higher side and disproportionate. The maximum substantive sentence for the offence under section 419 is three years. That is the sentence imposed by the trial Court. This is a case where the Appellant claimed to be a Gynaecologist. She not only examined patients and prescribed medicines but she also performed surgeries. It is true that the prosecution has not led any evidence to show that any mishap at the hands of the Appellant had taken place. However, the fact remains that without possessing any requisite qualifications and

the registration as required by law, the Appellant carried on her medical practice in a brazen manner and went to the extent of performing surgeries. Such offender deserves maximum punishment. Therefore, for the offence under section 419 of the Penal Code, the sentence of three years is certainly justified.

31. For the offence under section 420 of the IPC the maximum sentence provided is 7 years. In the deposition of P.W.4 P.S.Sukumar he has stated that on the basis of false representation made by the Appellant, the Bank sanctioned loan of Rs.3,60,000/-. In the entire deposition he has not stated that the Appellant committed any default in repayment of the loan amount or that the Appellant defrauded the bank by not repaying the amount advanced. The learned Counsel for the Appellant across the bar made a statement that the loan amount has been repaid by the Appellant with interest. The officer of the bank examined before the Court has not stated that the loan amount was repaid. However, he has also not stated that any default was committed by the Appellant in repayment of the loan. So far as the question of sentence is concerned, the observations of the Apex Court in the case of B.G.Goswami v/s. Delhi Administration (AIR 1973 SC 1457) are relevant, though the case before the Apex Court was the one under the Prevention of Corruption Act. The Apex Court held that:

"**Now the question of sentence is always a difficult question, requiring as it does, proper adjustment and balancin of various considerations which weigh with a judicial mind in determining its appropriate quantum in a given case.** The main purpose of the sentence broadly stated is that the accused must realise that he has committed an act which is not only harmful to the society of which he forms an integral part but is also harmful to his own future, both as an individual and as a member of the society. Punishment is designed to protect society by deterring potential offenders as also by preventing the guilty party from repeating the offence. It is also designed to reform the offender and re-claim him as a law abiding citizen for the good of the society as a whole. Reformatory, deterrent and punitive aspects of punishment thus play their due part in judicial thinking while determining this question. In modern civilized societies, however, reformatory aspect is being given somewhat greater importance. **Too lenient as well as too harsh sentences both lose their efficaciousness. One does not deter and the**

other may frustrate thereby making the offender a hardened criminal."(Emphasis supplied)

In this case the the prosecution has not made out a case of any actual monetary loss being caused to the Bank. The allegation of the prosecution ends by saying that by making a false and dishonest representation, the Bank was induced to sanction loan. The Apex Court has held in the case of B.G.Goswami (supra) that too lenient as well as too harsh sentences both lose their efficaciousness because one does not deter and the other may frustrate.

32. The maximum punishment prescribed for the offence under section 420 has been imposed in this case though the actual monetary loss to the Bank has not been established. While deciding the question of quantum of sentence in a given case, proper adjustment and balancing of various considerations which weigh with the judicial mind has to be made for arriving at appropriate quantum of punishment. It is true that one of the objects of sentence is that the accused must realise that he or she has committed an act which is not only harmful to the society but is also harmful to him or her in future as a member of the society. While deciding the quantum of sentence the reformatory, deterrent and

punitive aspects have to be considered. The prosecution is of the year 1987 based on the incident of commission of offence which relates to the year 1985-86. More than 20 years have gone by and the present age of the Appellant must be above 55. The Appellant was on bail all throughout. The offence under section 420 of the Penal Code has been alleged in respect of loan transaction with the Syndicate Bank. The prosecution has not even alleged that any monitory loss has been caused to the Bank. Therefore, in my view, the substantive sentence under section 420 of the IPC deserves to be reduced to R.I. for 3 years. However, fine amount of Rs.10,000/- has to be maintained. The learned trial Judge has directed that the substantive sentences shall run separately so also the sentences in default. In my view the sentences will have to be directed to run concurrently.

33. Hence the following order is passed:

(i) The order of conviction passed against the Appellant is confirmed.

(ii) The order of sentence is modified to a limited extent and it is directed that for the offence under section 420 of the IPC, the Appellant is sentenced to

undergo R.I. for 3 years. Rest of the order passed by the trial Court as regards the substantive sentences, the amounts of fine and sentences imposed in default of payment of fine is maintained.

(iii) The substantive sentences are directed to run concurrently. The sentences in default of payment of fine are also directed to run concurrently.

(iv) The order of the trial Court granting set off under section 428 is also confirmed.

(v) The Appellant is directed to surrender to bail. The Appellant shall be taken in custody for undergoing the sentence.

(vi) The Criminal Appeal No.656 of 1989 is accordingly partly allowed.

(vii) The Criminal Appeal No.49 of 1990 against the order of acquittal is dismissed.

34. At this stage the learned Counsel for the Appellant prays that sufficiently long time be granted to surrender. He submits that the Appellant was on bail

throughout the pendency of the trial and the appeal. He submits that the Appellant has remained present at the time of hearing of the Appeal. He states that the Appellant may not get a copy of the Judgment immediately. The learned A.P.P. opposed the said prayer. Considering the facts and circumstances of the case, the Appellant is granted time of six weeks from today to surrender subject to the condition that for a period of six weeks from today, the Appellant will report to the Officer-in-charge of the Bhayandar Police Station, District Thane every day in the morning at 11.00 a.m.

Judge.